

CITY OF NEWPORT

ORDINANCE NO. 2071

AN ORDINANCE ESTABLISHING A TAX ON THE SALE OF MARIJUANA AND MARIJUANA-INFUSED PRODUCTS IN THE CITY OF NEWPORT

WHEREAS, Section 4 of the Newport Charter provides:

Powers of the City. The city has all powers that the constitutions, statutes, and common law of the United States and Oregon expressly or impliedly grant or allow the city, as fully as though this charter specifically enumerated each of those powers;

WHEREAS, the city desires to tax the sale or transfer of marijuana and marijuana-infused products within the city;

THE CITY OF NEWPORT ORDAINS AS FOLLOWS:

SECTION 1.

Purpose. For the purposes of this ordinance, every person who sells marijuana or marijuana-infused products in the City of Newport is exercising a taxable privilege. The purpose of this ordinance is to impose a tax upon the retail sale of marijuana and marijuana-infused products.

Definitions.

- A. "City Manager" means the City Manager of the City of Newport or his/her designee.
- B. "Gross Taxable Sales" means the total amount received in money, credits, property, or other consideration from sales of marijuana and marijuana-infused products that is subject to the tax imposed by this ordinance.
- C. "Marijuana" means all parts of the plant of the Cannabis family Moraceae, whether growing or not; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant or its resin. It does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.
- D. "Marijuana Infused Products" means products infused with usable marijuana that are intended for use, ingestion, or consumption other than by smoking, including but not limited to edible products, ointments, and tinctures.
- E. "Medical use of marijuana" means the production, possession, delivery, distribution or administration of marijuana, or paraphernalia used to administer marijuana, as necessary for the exclusive benefit of a person to mitigate the symptoms or effects of

the person's debilitating medical condition.

- F. "Person" means natural person, joint venture, joint stock company, partnership, association, club, company, corporation, business, trust, organization, or any group or combination acting as a unit, including the United States of America, the State of Oregon and any political subdivision thereof, or the manager, lessee, agent, servant, officer or employee of any of them.
- G. "Purchase or Sale" means the retail acquisition or furnishing for consideration by any person of marijuana or marijuana infused products within the City and does not include the acquisition or furnishing of marijuana by a grower or processor to a seller.
- H. "Purchaser" means any person who acquires marijuana from a seller for any valuable consideration. "Purchaser" does not mean a registry identification card holder who acquires marijuana or marijuana-infused products for medical use from a dispensary registered by the Oregon Health Authority under ORS 475.314.
- I. "Registry identification cardholder" means a person who has been diagnosed by an attending physician with a debilitating medical condition and for whom the use of medical marijuana may mitigate the symptoms or effects of the person's debilitating medical condition, and who has been issued a registry identification card by the Oregon Health Authority.
- J. "Retail sale" means the transfer of goods or services in exchange for any valuable consideration and does not include the transfer or exchange of goods or services between a grower or processor and a seller.
- K. "Seller" means any person who is required to be licensed or registered, or has been licensed or registered by the State of Oregon to provide marijuana or marijuana-infused products to purchasers for money, credit, property, or other consideration. "Seller" does not mean a dispensary registered by the Oregon Health Authority under ORS 475.314 to provide marijuana or marijuana-infused products to registry identification card holders for medical use.
- L. "Tax" means either the tax payable by the purchaser or the aggregate amount of taxes a seller is required to remit during the period for which the seller is required to report collections under this ordinance.

Levy of Tax.

- A. There is hereby levied and shall be paid a tax by every purchaser exercising the taxable privilege of purchasing marijuana or marijuana-infused products as defined in this ordinance. The tax constitutes a debt owed by the purchaser to the city and shall be extinguished only by payment to the seller or to the city.
- B. The amount of tax levied shall be established by a resolution of the City Council.

- C. The purchaser shall pay the tax to the seller at the time of the purchase or sale of the marijuana or marijuana-infused products.
- D. Every seller shall collect the tax from the purchaser at the time of the purchase or sale of the marijuana or marijuana-infused products. The tax collected by the seller constitutes a debt owing from the seller to the City.

Deductions. The following deductions shall be allowed against sales received by the seller providing marijuana:

- A. Refunds of sales actually returned to any purchaser;
- B. Any adjustments in sales which amount to a refund to a purchaser, providing such adjustment pertains to the actual sale of marijuana or marijuana-infused products and does not include any adjustments for other services furnished by a seller.

Seller Responsible for Payment of Tax.

- A. Every seller shall, on or before the last day of the month following the end of each calendar quarter (in the months of April, July, October, and January) make a report to the City Manager, on forms provided by the city, specifying the total sales subject to this ordinance and the amount of tax collected under this ordinance. A report shall not be considered filed until it is actually received by the City Manager.
- B. At the time the report is filed, the full amount of the tax collected by the seller shall be remitted to the City Manager.
- C. Payments shall be applied in the order of the oldest liability first, with the payment credited first toward any accrued penalty, then to interest, then to the underlying tax until the payment is exhausted. If the City Manager, in his or her sole discretion, determines that an alternative order of payment application would be in the best interest of the city in a particular tax or factual situation, the City Manager may order such a change. The City Manager may establish shorter reporting periods for any seller if the City Manager deems it necessary in order to insure collection of the tax. The City Manager also may require additional information in the report relevant to payment of the liability. When a shorter reporting period is required, penalties and interest shall be computed according to the shorter reporting period. Reports and payments are due immediately upon cessation of business for any reason. All taxes collected by sellers pursuant to this ordinance shall be held in trust for the account of the City until remitted to the City Manager. A separate trust bank account is not required in order to comply with this provision.
- D. For good cause, the City Manager may extend the time for filing a report or paying the tax for not more than one month. Further extension may be granted only by the City Council. A seller to whom an extension is granted shall pay interest at

the rate of one percent (1%) per month on the amount of tax due, without proration for a fraction of a month. If a report is not filed and if the tax and interest due are not paid by the end of the extension period, the interest shall become a part of the tax for computation of the penalties prescribed in this ordinance.

- E. Every seller required to remit the tax imposed in this ordinance shall be entitled to retain five percent (5%) of all taxes due to defray the costs of bookkeeping and remittance.
- F. Every seller must keep and preserve in an accounting format established by the City Manager records of all sales made by the seller as well as such other books or accounts as may be required by the City Manager. Every seller must keep and preserve for a period of three (3) years all such books, invoices and other records. The City Manager shall have the right to inspect all such records upon request.

Penalties and Interest.

- A. Any seller who fails to remit any portion of any tax imposed by this ordinance within the time required shall pay a penalty of ten percent (10%) of the amount of the tax, in addition to the amount of the tax.
- B. Any seller who fails to remit any delinquent remittance on or before the 60th day following the date on which the remittance first became delinquent, shall pay an additional delinquency penalty of ten percent (10%) of the amount of the tax in addition to the amount of the tax and the penalty first imposed.
- C. If the City Manager determines that the nonpayment of any remittance due under this ordinance is due to fraud, a penalty of twenty-five percent (25%) of the amount of the tax shall be assessed by the city in addition to the penalties stated in subparagraphs A and B of this section.
- D. In addition to the penalties imposed, any seller who fails to remit any tax imposed by this ordinance shall pay interest at the rate of one percent (1%) per month or fraction thereof on the amount of the tax, exclusive of penalties, from the date on which the remittance first became delinquent until paid.
- E. Every penalty imposed, and such interest as accrues under the provisions of this section shall become a part of the tax required to be paid.
- F. A seller who fails to remit the tax within the required time may petition the City Council for waiver and refund of the penalty or a portion of it. The City Council may, if good cause is shown, direct a refund of the penalty or a portion of it. Any such hearing will be conducted under the procedures described in the Appeal section of this ordinance.

Failure To Report and Remit Tax -Determination of Tax by City Manager. If any seller fails to make, within the time provided in this ordinance, any report of the tax required by this ordinance, or if the City Manager questions the accuracy of a report, the City Manager

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shall proceed in such manner as deemed best to obtain facts and information on which to base the estimate of tax due. As soon as the City Manager procures such facts and information as are obtainable, upon which to base the assessment of any tax imposed by this ordinance and payable by any seller, the City Manager shall proceed to determine and assess against such seller the tax, interest, and penalties provided for by this ordinance. The City Manager shall give a notice of the amount to be assessed by having it served personally or by depositing it in the United States mail, postage prepaid, addressed to the seller so assessed at the seller's last known address. The seller may make an appeal of such determination as provided in the Appeal section of this ordinance. If no appeal is filed, the City Manager's determination is final and the amount of tax assessed by the City Manager is immediately due and payable.

Appeal.

- A. Any person aggrieved by any decision of the City Manager with respect to the amount of tax, interest, and penalties owing under this ordinance, if any, may appeal to the City Council by filing a notice of appeal with the City Manager within fifteen (15) days of mailing of the notice of the City Manager's decision. The City Manager shall fix a time and place for hearing the appeal, and shall give the appellant fifteen days written notice of the time and place of the hearing before the City Council. The notice of hearing shall be served personally or by deposited in the United States mail, postage prepaid, addressed to the appellant at the appellant's last known address.
 - B. The appellant shall pay a nonrefundable appeal fee to facilitate the appeal. Appeal fees shall be set at \$150 for each decision appealed, and may be adjusted by resolution of the City Council.
 - C. The parties shall be entitled to appear personally and by counsel and to present such facts, evidence and arguments as may tend to support the respective positions on appeal.
 - D. The City Council shall hear and consider any records and evidence presented bearing upon the City Manager's determination of the amount due, and make findings affirming, reversing or modifying the determination.
 - E. Informal disposition may be made of any appeal by stipulation, agreed settlement, consent order, or default.
 - F. The action of the City Manager shall be stayed pending the outcome of an appeal properly filed pursuant to this section.
 - G. Failure to strictly comply with the applicable appeal requirements, including but not limited to the required elements for the written notice of appeal, time for filing of the notice of appeal, and payment of the applicable appeal fee, shall constitute jurisdictional defects resulting in the dismissal of the appeal.
 - H. The findings of the City Council shall be final and conclusive, and shall be
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served upon the appellant in the manner prescribed above for service of notice of hearing. Any amount found by the City Council to be due shall be immediately due and payable upon the service of notice.

Refunds.

- A. Whenever the amount of any tax, interest or penalty has been overpaid or paid more than once, or has been erroneously collected or received by the city under this ordinance, it may be refunded as provided in paragraph B of this section, provided a claim in writing, stating under penalty of perjury the specific grounds upon which the claim is founded, is filed with the City Manager within one year of the date of payment. The claim shall be made on forms furnished by the City Manager.
- B. The City Manager shall have 20 calendar days from the date of receipt of a claim to review the claim and make a determination in writing as to the validity of the claim. The City Manager shall notify the claimant in writing of the City Manager's determination. Such notice shall be mailed to the address provided by claimant on the claim form. In the event a claim is determined by the City Manager to be a valid claim, in a manner prescribed by the City Manager a claimant may claim a refund, or take as credit against taxes collected and remitted, the amount overpaid, paid more than once, or erroneously collected or received. The claimant shall notify the City Manager of the claimant's choice no later than 15 days following the date the City Manager mailed the determination. In the event the claimant has not notified the City Manager of the claimant's choice within the 15 day period, the claimant is a seller, and the claimant is still in business, a credit will be granted against the claimant's tax liability for the next reporting period. If the claimant is a seller and the claimant is no longer in business, a refund check will be mailed to the claimant at the address provided in the claim form.
- C. No refund shall be paid under the provisions of this section unless the claimant established the right to a refund by written records showing entitlement to such refund and the City Manager has acknowledged the validity of the claim. All refunds shall be made from the fund receiving marijuana tax revenues.

Actions to Collect.

- A. Any tax required to be remitted by any seller under the provisions of this ordinance shall be deemed a debt owed by the seller to the city. Any such tax collected by a seller which has not been remitted to the city shall be deemed a debt owed by the seller to the city. The city may bring an action in the name of the City of Newport to collect the amount of tax due and owing as well as any penalties and interest. In lieu of filing an action for the recovery, the City of Newport, when taxes due are more than 30 days delinquent, may submit any outstanding tax to a collection agency. So long as the City of Newport has complied with the provisions set forth in ORS 697.105, in the event the city turns over a delinquent tax account to a collection agency, it may add to the amount owing a reasonable fee to compensate the City for payment of the collection agency's fees.

Violations.

- A. It is unlawful for any seller or any other person so required to fail or refuse to furnish any report required to be made, or fail or refuse to furnish a supplementary report or other data required by the City Manager or to enter a false or fraudulent report, with intent to defeat or evade the determination of any amount due required by this ordinance.
- B. Violation of any provision of this ordinance shall be punishable by a fine established by Chapter 1.50.010 of the Newport Municipal Code. Every day in which the violation is caused or permitted to exist constitutes a separate infraction, and the punishment therefor shall be in addition to any other penalty, interest, sum or charge imposed by this ordinance. Delinquent taxes and fees, penalty and interest imposed by this ordinance may be collected in a civil action.
- C. The remedies provided by this section are not exclusive and shall not prevent the city from exercising any other remedy available under the law, nor shall the provisions of this ordinance prohibit or restrict the city or other appropriate prosecutor from pursuing criminal charges under state law or city ordinance.

Confidentiality. Except as otherwise required by law, the city shall endeavor not to divulge, release, or make known in any manner any financial information submitted or disclosed to the city under the terms of this ordinance. Nothing in this section shall prohibit:

- A. The disclosure of the names and addresses of any person who is operating a licensed or registered establishment from which marijuana is sold or provided; or
- B. The disclosure of general statistics in a form which would not reveal an individual seller's financial information; or
- C. Presentation of evidence to a court, or other tribunal having jurisdiction in the prosecution of any criminal or civil claim by the city or an appeal from a determination by the City Manager for amount due the city under this ordinance; or
- D. The disclosure of information when such disclosure of conditionally exempt information is ordered under public records law procedures; or
- E. The disclosure of records related to a business' failure to report and remit the tax for regulatory, collections, or enforcement purposes. The City Council expressly finds and determines that the public interest in disclosure of such records clearly outweighs the interest in confidentiality under ORS 192.501(5).

Audit of Books, Records or Persons.

- A. It shall be the duty of every seller liable for the collection and payment to the city of any tax imposed by this chapter to keep and preserve, for a period of three years,

all records, books, reports, income tax reports and other matters required by this chapter as may be necessary to determine the amount of such tax as the seller may have been liable for the collection of and payment to the City, which records the City Manager shall have the right to inspect upon request. Every seller shall maintain records of marijuana purchase and sales, accounting books, and records of income. Sellers must, at a minimum, maintain a cash receipt and deposit journal, and a cash disbursements journal/check register for all authorized deductions. These records and books shall reconcile to the tax reports and be auditable. If the City Manager finds the books and records of the seller are deficient in that they do not provide adequate support for tax reports filed, or the seller's accounting system is not auditable, it shall be the responsibility of the seller to improve its accounting system to the satisfaction of the City Manager.

- B. The city, for the purpose of determining the correctness of any tax return, or for the purpose of an estimate of taxes due, may examine or may cause to be examined by an agent or representative designated by the city for that purpose, any books, papers, records, or memoranda, including copies of the seller's state and federal income tax return, bearing upon the matter of the seller's tax reports. All books, invoices, accounts and other records shall be made available within the city limits and be available at any time during regular business hours for examination by the City Manager or an authorized agent of the City Manager. If any seller refuses to voluntarily furnish any of the foregoing information when requested, the City Manager may immediately seek a subpoena from the Newport Municipal Court to require that the seller or a representative of the seller attend a hearing or produce any such books, accounts and records for examination.

Forms and Regulations. The City Manager is hereby authorized to prescribe forms and promulgate rules and regulations to aid in the making of reports, the ascertainment, assessment, and collection of the marijuana sales tax, and in particular and without limiting the general language of this ordinance, to provide for:

- A. A form of report on sales and purchases to be supplied to all sellers;
- B. The records which sellers providing marijuana and marijuana-infused products are to keep concerning the tax imposed by this ordinance.

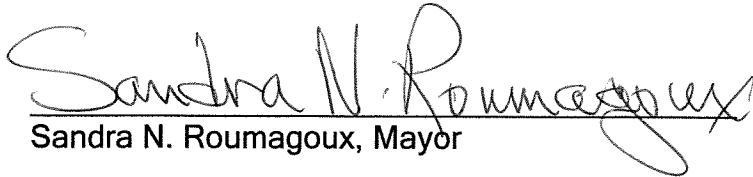
SECTION 2. Severability. The sections, subsections, paragraphs and clauses of this ordinance are severable. The invalidity of one section, subsection, paragraph, or clause shall not affect the validity of the remaining sections, subsections, paragraphs and clauses.

SECTION 3. Savings. Notwithstanding any amendment/repeal, the City ordinances in existence at the time any criminal or civil enforcement actions were commenced shall remain valid and in full force and effect for purposes of all cases filed or commenced during the times said ordinance(s) or portions thereof were operative. This section simply clarifies the existing situation that nothing in this Ordinance affects the validity of prosecutions commenced and continued under the laws in effect at the time the matters were originally filed.

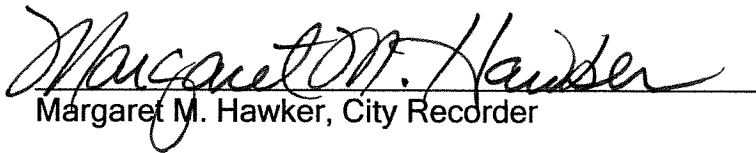
SECTION 4. This ordinance shall take effect 30 days after passage.

Adopted by the Newport City Council on October 21, 2014.

Signed by the Mayor on October 22, 2014.


Sandra N. Roumagoux, Mayor

ATTEST:


Margaret M. Hawker, City Recorder

Approved:

City Attorney